§ 764.6 Interest rate.

The interest rate applicable for an Emergency loan will be the lower of the interest rate at the time of either loan approval or loan closing and in no event shall exceed 8 percent annually.

§ 764.7 Loan terms.

(a) *Basis for repayment.* The Agency schedules repayment of Emergency loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.

(b) *Minimum payment requirement.* The repayment schedule must include at least one payment every year.

(c) *Repayment of loans for annual operating expenses.* Emergency loans for annual operating expenses, except those expenses associated with establishing a perennial crop, must be repaid within 12 months. The Agency, however, may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities of the farming operation.

(d) *Repayment of loans for production or physical losses to chattel.* The repayment schedule for loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between 1 and 7 years) may not exceed 7 years. If necessary to improve the repayment ability of the loan and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years.

(e) *Repayment of loans for physical losses to real estate.* The repayment schedule for loans for physical losses to real estate is based on repayment ability of the applicant and the useful life of the security, but in no case will the term of repayment exceed 40 years.

§ 764.8 Repayment and security requirements.

(a) *General requirements*—(1) *Ability to repay.* The applicant must submit a feasible plan that demonstrates the applicant's ability to repay the loan. The plan also must demonstrate that the applicant will meet all other credit needs and obligations, including judgments, for which the applicant is legally responsible.

(2) *Sufficient equity.* The applicant must have sufficient equity in the security pledged for an Emergency loan to provide adequate security for the loan except as permitted in paragraph (f) of this section. The applicant must provide additional security, if available, not to exceed 150 percent of the loan amount.

(3) *Interests in property not owned by the applicant.* Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan and will be considered in determining whether adequate security is available.

(b) *Real estate loans.* In the case of an Emergency loan for real estate losses, the loan shall be secured at a minimum by the real estate that is being purchased, repaired, replaced, or improved with the loan funds.

(c) *Chattel and production loans.* In the case of an Emergency loan for chattel and production losses, the loan shall be secured, at a minimum, by the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(d) *Agency lien position*—(1) *Real estate security.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available, on the real estate. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(i) The prior lien does not contain any provision that may jeopardize the Agency's interest or the applicant's ability to repay the loan to the Agency;

(ii) Prior lienholders agree to notify the Agency of acceleration and foreclosure whenever State law or other arrangements do not require such notice; and

(iii) The applicant must agree to obtain permission from the Agency prior to granting any additional security interests in the real estate.

(2) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(i) The applicant must provide a security interest in the real estate;

(ii) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate;

(iii) The applicant must refinance the existing purchase contract, or demonstrate that financing is not available, if an acceptable contract of sale cannot be negotiated or the purchase contract holder refuses to agree to apply all the insurance proceeds to repair or replace the damaged real estate and wants to retain some of the proceeds as an extra payment on the balance owed;

(iv) The purchase contract must not be subject to summary cancellation on default and must not contain any provisions that are contrary to the Agency's best interests; and

(v) The contract holder must agree in writing to notify the Agency of any breach by the purchaser, and give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(3) *Chattel security.* If chattel property is pledged as security for a loan the Agency must obtain a first lien on the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(e) *Same security for multiple loans.* The same property may be pledged as security for more than one Farm Loan Program loan.

(f) *Lack of adequate security.* When adequate security is not available because of the disaster, the loan application may be approved if the Agency determines, based on the plan required in paragraph (a)(1) of this section, that there is a reasonable assurance that the applicant has the ability to repay the loan (based on an on-going operational basis, excluding special one-time sources of income or expenses) provided:

(1) The applicant has pledged as collateral for the loan, all available personal and business collateral, except those items listed in paragraphs (h)(1) and (h)(2) of this section;

(2) The feasible plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history and addresses applicable pricing risks through the use of marketing contracts, hedging, options, revenue insurance or similar risk management practices;

(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and

(4) The applicant has given the Agency an assignment on any USDA program payments to be received.

(g) *Conditions for taking other assets as security*—(1) *Conditions.* In addition to the requirements for adequate and additional security, the Agency will take a security interest in other assets (other than assets listed under the exceptions in paragraph (h) of this section), if available, when:

(i) An applicant has non-essential assets that are not being converted to cash to reduce the loan amount; or

(ii) The real estate security and chattel security do not provide adequate security for the loan.

(2) *List of other assets.* Other assets may include:

(i) A pledge of real estate or chattel by a third party;

(ii) Patents, copyrights, life insurance, stocks, other securities, and membership in cooperatives, owned by the applicant;

(iii) Assets owned by an applicant that cannot be converted to cash without jeopardizing the farm operation; and

(iv) Non-essential assets owned by the applicant with an aggregate value in excess of $5,000.

(h) *Exceptions to security requirements.* The Agency will not take a security interest in certain property in the following situations:

(1) The property proposed as security has environmental contamination, restrictions, or historical impact that could impair the value or expose the Agency to potential liability;

(2) The Agency cannot obtain a valid lien on the security;

(3) The applicant's personal residence and appurtenances are on a parcel of land separate and apart from that real estate being used as adequate security for the loan; or

(4) The applicant's other assets are used for farming or for essential living expenses and are not needed for security purposes, including but not limited to, subsistence livestock, cash or

special cash collateral accounts, retirement accounts, personal vehicles, household goods, and small tools and equipment such as hand tools, power lawn mowers.

(i) *Requirements for security*. (1) For loans over $25,000, title clearance is required when real estate is taken as security.

(2) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, naming the record owner of the real estate in question and listing the balances due on all known debts against the real estate. Whenever the loan approving official is uncertain of the record owner or debts against the real estate security, a title search is required.

(j) *Taking Indian Trust lands as security*. The Agency may take a lien on Indian Trust lands as security provided that the requirements of § 1943.19(a)(7) of this title are satisfied.

§ 764.9 Appraisal and valuation requirements.

(a) *Establishing value for real estate*. Real estate appraisals conducted pursuant to this part may be completed by designated appraisers or contract appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice guidelines and standards in accordance with § 761.7 of this chapter.

(b) *Establishing value for agricultural commodities and equipment*. Valuations of agricultural commodities and equipment shall be established as follows:

(1) The security value of the annual agricultural commodities production (excluding livestock) will be 100 percent of the amount loaned for annual operating and essential family household expenses, or the amount of expected crop revenue, excluding farm program and insurance payments, whichever is lower.

(2) The value of livestock and equipment will be the market value as determined by the Agency in accordance with § 761.7 of this chapter.

(c) *Assets damaged by the disaster*. In the case of farm assets damaged by the disaster, the value of such security shall be established as of the day before the disaster occurred.

[67 FR 795, Jan. 8, 2002; 67 FR 7942, Feb. 21, 2002]

§ 764.10 Insurance for loan security.

(a) *Adequacy of insurance*. An applicant must obtain insurance, consistent with this section, equal to the lesser of the value of the security at the time of loan closing, or the principal of the loan.

(b) *Hazard insurance*. All security (except growing crops) must be covered by hazard insurance if it is readily available (*i.e.* sold by insurance agents in the applicants normal trade area) and economically feasible.

(c) *Flood or mudslide insurance*. Real estate security located in flood or mudslide prone areas, as determined by the Agency, must be covered by flood or mudslide insurance.

(d) *Crop insurance*—(1) *Requirement to obtain crop insurance*. Except as provided in paragraph (d)(2) of this section, prior to closing the loan, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of an applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.

(2) *Exception*. Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available.

(e) *Indemnities*. A borrower must:

(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(2) In the case of crop insurance, execute an assignment of indemnity in favor of the Agency.

§ 764.11 Charges and fees.

The applicant must pay all filing, recording, notary, and lien search fees necessary to process and close a loan. The applicant may pay or be reimbursed for these fees from Emergency loan funds.